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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **Western Division**

13 BOARD OF DIRECTORS OF
14 THE MOTION PICTURE
INDUSTRY PENSION PLAN,
15 BOARD OF DIRECTORS OF THE
MOTION PICTURE INDUSTRY
16 INDIVIDUAL ACCOUNT PLAN,
AND BOARD OF DIRECTORS OF
17 THE MOTION PICTURE
INDUSTRY HEALTH PLAN,

18 Plaintiffs,
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20 vs.

21 JACAVI FLAVOR NOVEMBER
RULE, LLC, a Florida Limited
Liability Company,
22

23 Defendant.
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27
28

CASE NO.

The Hon.

COMPLAINT FOR SPECIFIC
PERFORMANCE AND
VIOLATION OF ERISA

[29 U.S.C. §§185, 1132, 1145]

1 Plaintiffs allege as follows:

2 **JURISDICTION**

3 1. Jurisdiction is conferred upon this court by the Employee Income
4 Retirement Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1001, *et*
5 *seq.*, and by section 301(a) of the Labor-Management Relations Act of 1947, as
6 amended ("LMRA"), 29 U.S.C. §185(a).

7 **VENUE**

8 2. In accordance with section 502(e) of ERISA, 29 U.S.C. §1132(e),
9 venue is appropriate in the Central District of California as the place where the
10 Plans are administered, and where the contractual obligations alleged herein are to
11 be performed.

12 **PARTIES**

13 3. Plaintiffs, the Boards of Directors of the Motion Picture Industry
14 Pension Plan and of the Motion Picture Industry Individual Account Plan and the
15 Motion Picture Industry Health Plan (herein "Plaintiffs") are each the duly
16 selected governing bodies of their respective jointly administered Labor-
17 Management Trust Funds that were created and are maintained pursuant to section
18 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5).

19 4. The Motion Picture Industry Pension Plan ("Pension Plan") and the
20 Motion Picture Industry Individual Account Plan ("IA Plan") are "Employee
21 Pension Benefit Plans" as defined in section 3(2) of ERISA, 29 U.S.C. §1002(2).
22 The Motion Picture Industry Health Plan ("Health Plan") is an "Employee Welfare
23 Benefit Plan" as defined in section 3(1) of ERISA, 29 U.S.C. §1002(1). The
24 Pension Plan, IA Plan, and Health Plan (collectively referred to herein as "the
25 Plans") are "multiemployer plans" within the meaning of sections 3(37)(A) and
26 515 of ERISA, and 29 U.S.C. §1002(37)(A), and 29 U.S.C. §1145. Plaintiffs are
27 fiduciaries with respect to the Plans within the meaning of section 21(A) of
28 ERISA, 29 U.S.C. §1002(21)(A).

1 5. The Plans were established pursuant to collective bargaining
2 agreements between various employers and employer associations performing
3 work in the entertainment (motion picture and television) industry, an industry
4 affecting commerce, and the International Alliance of Theatrical Stage Employees
5 and Moving Picture Machine Operators of the United States and Canada, AFL-
6 CIO ("IATSE"), an unincorporated labor organization and Studio Transportation
7 Drivers Local 399 of the International Brotherhood of Teamsters ("Local 399"),
8 an unincorporated labor organization. The Plans are administered in Studio City,
9 within the County of Los Angeles.

10 6. Plaintiffs are informed and believe and thereon allege that Defendant
11 JACAVI FLAVOR NOVEMBER RULE, LLC (hereafter "Jacavi" or
12 "Defendant") is a limited liability company organized and existing under and by
13 virtue of the laws of the State of Florida.

14 7. At all relevant times herein, Jacavi has been an employer in an
15 industry affecting commerce, within the meaning of the LMRA and ERISA.

16 8. This complaint is prosecuted pursuant to section 301(a) of the
17 LMRA, 29 U.S.C. §185(a), and pursuant to sections 502 and 515 of the ERISA,
18 29 U.S.C. §§1132 and 1145, to enforce the provisions of a collective bargaining
19 agreement and ERISA against an employer engaged in an industry affecting
20 commerce.

21 **FIRST CLAIM FOR RELIEF**

22 **(Specific Performance)**

23 **(By All Plaintiffs Against Defendant)**

24 9. Plaintiffs hereby reallege each and every allegation contained in
25 paragraphs 1 through 8, as if fully set forth herein.

26 10. Beginning in or about January 2014, Jacavi executed the following
27 collective bargaining agreements with IATSE and Local 399 covering work
28

1 performed on the production of the film “November Rule” (herein “the
2 Production”):

3 a. IATSE PROJECT AGREEMENT agreeing to be bound by the
4 Producer/IATSE Basic Agreement of 2012, and the Low Budget Theatrical
5 Agreement 2014-16 and successor Agreements for the Production, a true and
6 correct copy of which is attached hereto as Exhibit “1” and incorporated herein by
7 reference;

8 b. LOCAL 399 MEMORANDUM AGREEMENT, agreeing to
9 be bound to the Producer-Studio Transportation Drivers Agreement, Location
10 Managers Local 399 Agreement and the Producer-Studio Casting Directors Local
11 399/ Local 817 Agreement, a true and correct copy of which is attached hereto as
12 Exhibit “2” and incorporated herein by reference. The IATSE Project Agreement
13 and the Studio Transportation Drivers Local 399 Memorandum Agreement are
14 referred to herein as “Jacavi’s Collective Bargaining Agreements.”

15 11. In conjunction with the execution of Jacavi’s Collective Bargaining
16 Agreements, Jacavi executed Trust Acceptances, agreeing to be bound by all
17 terms and conditions of the Trust Agreements establishing the Pension Plan, the
18 IA Plan and the Health Plan (“Trust Agreements”), and to contribute to the Plans
19 on behalf of each employee covered by Jacavi’s Collective Bargaining
20 Agreements for the Production of “November Rule”. True and correct copies of
21 the Trust Acceptances executed by Jacavi are attached hereto marked collectively
22 as Exhibit “3” and incorporated herein by reference.

23 12. The Trust Agreements obligate Employers to forward a single,
24 combined weekly remittance report, together with contributions owed to the Plans
25 for the total hours worked by or guaranteed to all covered employees by the last
26 day of the week following the week in which work was performed. Contributions
27 are delinquent if they are not received within five (5) days from the date such
28 contributions become due.

1 13. The Trust Agreements at Article III of the Pension Plan, Article V of
2 the Health Plan and Article III of the Individual Account Plan provide that “the
3 Directors may, at reasonable times and during normal business hours of any
4 Employer, audit or cause the audit inspection of the records of any Employer
5 which may be pertinent in connection with the said contributions and/or reports
6 insofar as same may be necessary to accomplish the purpose” of the Trust
7 Agreements.

8 14. The Trust Agreements for each of the Plans further provide that if an
9 Employer fails to make records available for an audit or inspection and the Plans
10 file a lawsuit to compel the production of documents, the Employer will be liable
11 for the Plans’ enforcement expenses including “all reasonable accountants’ fees,
12 auditors’ fees, attorneys’ fees and costs incurred in connection therewith, in
13 addition to any delinquent contributions, liquidated damages, interest, attorneys’
14 fees and costs, whether or not the audit or inspection identifies delinquent
15 contributions.”

16 15. The Plans have determined that the following records of Defendant
17 Jacavi must be made available for inspection, and are necessary for the Plans to
18 determine whether all contributions have been properly reported and paid in
19 accordance with Jacavi’s Collective Bargaining Agreements and the Trust
20 Agreements: proof of payment, invoices, and Deal Memos/Contracts along with
21 such other records as may be necessary in the opinion of the Plans’ auditor, and
22 any other records or information that the Plans require to examine for the audit
23 period commencing January 5, 2014 through April 5, 2014.

24 16. In accordance with the provisions of the Trust Agreements and the
25 exercise of their fiduciary duties required by federal statutory and common law,
26 Plaintiffs demanded that Defendant Jacavi submit the foregoing records for
27 auditing in order to ascertain if Jacavi has properly reported and paid contributions
28 in accordance with Jacavi’s Collective Bargaining Agreements and the Trust

1 Agreements, Jacavi has failed and refused to comply with the Plaintiffs' audit
2 demands.

3 17. As a result of the breach of Jacavi's Collective Bargaining
4 Agreements and the Trust Agreements, Plaintiffs are unable to ascertain whether
5 contributions have been properly reported and paid to the Plans for covered work,
6 and Plaintiffs have no adequate remedy at law. Plaintiffs are informed and believe
7 and upon that basis allege that Jacavi has failed to accurately report and pay
8 contributions to the Plans in accordance with the provisions of Jacavi's Collective
9 Bargaining Agreements and the Trust Agreements. The exact amount of damages
10 incurred as a result of the breach has not been determined, but Plaintiffs will seek
11 permission of the Court to amend when the amounts are ascertained through audit.

12 18. As a result of Jacavi's failure to provide access to its records for audit
13 either electronically or through delivery of the requested records to the Plans'
14 auditors, it has been necessary for the Plans to retain the law firm of Wohlner
15 Kaplon Cutler Halford & Rosenfeld and Plaintiffs have incurred costs.

16 19. In accordance with the provisions of Jacavi's Collective Bargaining
17 Agreement and the Trust Agreements, Plaintiffs are entitled to an order requiring
18 Jacavi to produce the specified records for audit by the Plaintiffs, together with
19 reasonable attorneys' fees and all costs, including audit costs, incurred in
20 enforcing the terms of Jacavi's Collective Bargaining Agreements and the Trust
21 Agreements.

22 20. Plaintiffs have complied with all conditions precedent, if any, to be
23 performed under the terms of Jacavi's Collective Bargaining Agreements and the
24 Trust Agreements.

25 **SECOND CLAIM FOR RELIEF**

26 **(Violation of ERISA)**

27 21. Plaintiffs hereby reallege each and every allegation contained in
28 paragraphs 1 through 20, as if fully set forth herein.

1 22. By failing to permit an audit of all requested records by the Plans in
2 accordance with the provisions of Jacavi's Collective Bargaining Agreements and
3 the Trust Agreements, Jacavi has violated ERISA §515, 29 U.S.C. §1145.

4 23. Without access to the compensation records as demanded, Plaintiffs
5 are unable to determine whether Jacavi has accurately reported and paid
6 contributions to the Plans in accordance with Jacavi's Collective Bargaining
7 Agreements and the Trust Agreements since reporting is based solely on an
8 Employer's statement and the Plaintiffs have no quick, economical, or efficient
9 way to determine if the reported contributions are correct. Without access to
10 Jacavi's records, Plaintiffs will be unable to determine whether benefits have been
11 properly paid which may subject Plaintiffs and/or Plans to penalties, suits and
12 damages for the failure to perform their duties, the gross sum of which is
13 incalculable, speculative, and may lead to irreparable damage.

14 24. In accordance with the terms of Jacavi's Collective Bargaining
15 Agreements and the Trust Agreements and pursuant to ERISA §§502(g)(2)(E) and
16 515, 29 U.S.C. §§1132(g)(2)(E) and 1145, and ERISA §502(a)(3), 29 U.S.C.
17 §1132(a)(3), Plaintiffs are entitled to and hereby demand as appropriate equitable
18 relief that the Court issue an order requiring Jacavi to make records of Jacavi
19 available electronically for audit or by delivery to the Plans' auditors for the
20 period of January 5, 2014 through April 5, 2014.

21 WHEREFORE, Plaintiffs pray for judgment against Defendant, JACAVI
22 FLAVOR NOVEMBER RULE, LLC, a Florida Limited Liability Company, as
23 follows:

24 1. For an Order compelling audit whereby Jacavi shall be directed by
25 the Court within a specified time after entry to:

26 A. Make electronic copies available of its proofs of payment,
27 invoices, and Deal Memos/Contracts, along with such other records as may be
28 necessary in the opinion of the Plans' auditor, and any other records or

1 information that the Plans require to examine for the audit period commencing
2 January 5, 2014 through April 5, 2014, or in the alternative deliver such records to
3 the Plan's offices in Studio City, California.

4 B. Afford to the Plans both ample time and opportunity to
5 examine all of Jacavi's materials specified above, without harassment, at its
6 offices in Studio City.

7 2. That in the event Jacavi cannot produce all of the records which the
8 Plans are required to examine, the Court enter an Order Compelling Record
9 Reconstruction where Jacavi shall be directed by the Court within a specified time
10 after the entry thereof, to:

11 A. Apply to the Federal and State agencies with which Jacavi
12 previously filed periodic reports pertaining to employees for copies of Jacavi's
13 reports to them for all of the periods for which Jacavi cannot produce records; and

14 B. Subsequently make available to the Plans all such copies of
15 Jacavi's periodic reports to the Federal and State agencies under the conditions set
16 forth in 1(B) above:

17 3. For payment of any unpaid contributions disclosed by audit and for
18 liquidated damages and interest assessed on all unpaid contributions in accordance
19 with the Trust Agreements and ERISA for the period of January 5, 2014 through
20 April 5, 2014.

21 4. For all fees and costs of audit;

22 5. For reasonable attorneys' fees incurred in prosecuting this action;

23 6. For costs of suit; and

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3 7. For such other relief as the court deems appropriate, and for such
4 other legal or equitable relief required by Section 502(g)(2)(E) ERISA, 29 U.S.C.
5 §1132(g)(2)(E).

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7 DATED: March 13, 2017

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13 The Boards of Directors of the Motion
14 Picture Industry Pension Plan and of the
15 Motion Picture Industry Individual Account
16 Plan and the Motion Picture Industry Health
17 Plan
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